

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs September 22, 2009 at Knoxville

**STATE OF TENNESSEE v. TONYA RENEE MITCHELL**

**Appeal from the Circuit Court for Dickson County  
No. CR7971, CR8046, and CR8053 George Sexton, Judge**

---

**No. M2009-00902-CCA-R3-CD - December 21, 2009**

---

The Defendant, Tonya Renee Mitchell, pled guilty in the Dickson County Circuit Court to obtaining a controlled drug by fraud, TennCare fraud, two counts of forgery, and one count of uttering a forged writing. The trial court sentenced the Defendant to an effective sentence of six years but suspended the sentence contingent upon supervised probation. The trial court revoked the Defendant's probation when she violated certain conditions. However, the trial court stayed the Defendant's sentences and granted a furlough for in-patient drug treatment. The Defendant was ordered to appear before the next Drug Court following her discharge from treatment. When the Defendant violated conditions of her Drug Court Program, the trial court revoked her stay and ordered her to serve the balance of her sentence in incarceration. Following our review, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Circuit Court is Affirmed.**

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and ROBERT W. WEDEMEYER, JJ., joined.

William B. "Jake" Lockert, III (on appeal), District Public Defender; and Dawn Kavanaugh, Assistant Public Defender (at hearing), attorneys for appellant, Tonya Renee Mitchell.

Robert E. Cooper, Jr., Attorney General and Reporter; and Clark B. Thornton, Assistant Attorney General; Dan Mitchum Alsobrooks, District Attorney General; and Billy Henry Miller, Assistant Attorney General, attorneys for appellee, State of Tennessee.

**OPINION**

At the March 25, 2009 probation revocation hearing, the Defendant's probation officer,

Glenn Parker, testified that he was assigned to monitor the Defendant's probation. Mr. Parker acted as the Defendant's supervision officer when the trial court ordered her to enter the Drug Court Program on December 7, 2006. The Defendant was released from the Drug Court Program for numerous rule violations but was re-admitted in January of 2009 following her discharge from a treatment center in Savannah, Tennessee. Mr. Parker testified that the Defendant was again discharged from the Drug Court Program on March 19, 2009 following "numerous rule violations . . . against developing relationships." The Defendant "more than once" wrote letters to male participants in the program, which violated the Program's rule against "fraternizing with members of the opposite sex."

On cross-examination, Mr. Parker agreed that the Defendant, during her stay with the Program, "worked diligently at fighting her addictions." The Defendant also successfully gained employment, a condition of the Drug Court Program. Mr. Parker agreed that the Defendant supported her four children to the best of her ability and maintained a home for the family. She also gave birth to a drug-free baby while in the program.

The Defendant testified that she participated in the Drug Court Program for two and a half years. During this time, she "learned how to stay sober." The Defendant admitted that her only relapse occurred after she took pain medicine at the hospital following the birth of her youngest child. Shortly after leaving the hospital, the Defendant regained sobriety. The Defendant testified that her quality of life in the Drug Court Program was "100 times better" than her previous lifestyle. Specifically, she stated that the Program taught her how to stay clean and sober, and taught her "how to live [her] life." The Defendant asserts that "[the] program is [her] life now."

The Defendant has four children. Her youngest child, who was born during the program, turned one year old on May 1, 2009. Despite her dedication to the Drug Court Program, the Defendant admitted that she committed numerous technical violations by writing letters to male participants in the program. Defendant testified that she was aware of the rules against writing and receiving letters from these men and knowingly violated these mandates. On cross-examination, the Defendant admitted that she persisted in violating the rule, despite being given multiple chances to remain in the program following her previous violations.

### ANALYSIS

A trial court may revoke a sentence of probation upon finding by a preponderance of the evidence that the defendant has violated the conditions of her release. Tenn. Code Ann. § 40-35-311(e). The decision to revoke probation is in the sound discretion of the trial judge. State v. Kendrick, 178 S.W.3d 734, 738 (Tenn. Crim. App. 2005); State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). The judgment of the trial court to revoke probation will be upheld on appeal unless there has been an abuse of discretion. State v. Harkins, 811 S.W.2d 79, 782 (Tenn. 1991). To find an abuse of discretion in a probation revocation case, the record must be devoid of

any substantial evidence that would support the trial court's decision that a violation of the conditions of probation occurred. Id.; State v. Grear, 568 S.W.2d 285, 286 (Tenn. 1978); State v. Delp, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980). Such a finding “reflects that the trial court's logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved in a particular case.” State v. Shaffer, 45 S.W.3d 553, 555 (Tenn. 2001) (quoting State v. Moore, 6 S.W.3d 235, 242 (Tenn. 1999)).

A trial court is not required to find that a violation of probation occurred beyond a reasonable doubt. Stamps v. State, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980). The evidence need only show that the court has exercised conscientious judgment in making the decision and has not acted arbitrarily. Id. In reviewing the trial court's finding, it is our obligation to examine the record and determine whether the trial court has exercised a conscientious judgment, rather than an arbitrary, judgment. Mitchell, 810 S.W.2d at 735 (Tenn. Crim. App. 1991).

After finding by a preponderance of the evidence that the defendant violated probation, the trial court may revoke the defendant's probation and “cause the defendant to commence the execution of the judgment as originally entered, or otherwise in accordance with § 40-35-310.” Tenn. Code Ann. § 40-35-311(e) (2006). Following a trial court's probation revocation, “the original judgment so rendered by the trial judge shall be in full force and effect from the date of the revocation of such suspension.” Id. at § 40-35-310. The trial court may not extend the defendant's probation beyond two years. Id. at § 40-35-308(c).

In the present case, the Defendant argues that the trial court abused its discretion in revoking her probation and/or lifting the stay on her sentence. Even if the trial court correctly revoked her probation, the Defendant argues that the court should have placed her on Community Corrections, rather than sentence her to incarceration because she demonstrated behavior over almost three years that showed she was clearly a good candidate for the program. The Defense argues that “[i]t is unreasonable to think that a human being will go three years without having some relationships of the romantic nature and absurd that a mother of four, working, sober, and doing well in her Alcoholics Anonymous program should be locked up for eight years because she wrote letters and had a romantic interest in men.” Thus, the Defendant argues that she is a “prime candidate for Community Corrections and should have been ordered to serve the [Tennessee Department of Corrections] sentence on Community Corrections.”

In response, the State argues that the Defendant's probation was rightfully revoked by the trial court. The “[D]efendant's probation had previously been revoked after a hearing and the imposition of her sentence had been stayed conditioned on her following the Drug Court Program's rules.” Based on the Defendant's “history of violating the simple rules of the Drug Court Program[,]” the State argues that the trial court's decision not to grant alternative sentencing was an intelligent, conscientious decision, thus well within its discretion.

The record reflects that the Defendant, by her own admission, repeatedly violated the Drug

Court Program's rule against fraternization with the opposite sex by "more than once" writing and receiving letters from male participants of the program. The Defendant's admissions of her impropriety is substantial evidence in support of the trial court's conclusion that the Defendant violated her probation. The record further reflects that the Defendant was expelled from a treatment facility for rule violations only six weeks before being terminated from drug court. The trial court strongly considered the fact that the Defendant's "probation [had] already been revoked, and she was allowed to attend Drug Court based upon a stay." The Defendant's knowing violations of the conditions of the program, combined with her history of similar violations, do not support the Defendant's assertion that she is a "prime candidate for Community Corrections." Based on the substantial evidence in the record, the trial court exercised a conscientious, rather than an arbitrary, judgment when it revoked the Defendant's probation, chose not to grant alternative sentencing, and ordered the Defendant to serve her full sentence in incarceration. We conclude that the trial court did not abuse its discretion in revoking the Defendant's probation and ordering her to serve the balance of her sentence in incarceration. Accordingly, the judgment of the trial court is affirmed.

### CONCLUSION

In consideration of the foregoing and the record as a whole, the judgments of the trial court are affirmed.

---

D. KELLY THOMAS, JR., JUDGE